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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,812	08/17/2006	Achim Kraus	022862-1103	2427
23409 7590 07/29/2010 MICHAEL BEST & FRIEDRICH LLP 100 E WISCONSIN AVENUE Suite 3300 MILWAUKEE, WI 53202				
EXAMINER				
GRAHAM, GARY K				
ART UNIT		PAPER NUMBER		
3727				
MAIL DATE		DELIVERY MODE		
07/29/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/589,812

**Applicant(s)**

KRAUS ET AL.

**Examiner**

Gary K. Graham

**Art Unit**

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 May 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6, 8-12 and 14-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-12 and 14-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-6, 8-12 and 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Metz (WO publication 03/035440) in view of Masuda (US patent application publication 2002/0083544).

The publication to Metz discloses the invention substantially as is claimed, including a wiper device (10) having a plate shaped base (not numbered but shown on part 16), a drive unit (32,34,36) arranged on said base, wiper bearings (22, 28) arranged on said base and retaining elements (18) arranged on said base.

The publication to Metz discloses all of the above recited subject matter with the exception of at least one predetermined breaking point on the base arranged in a region of the retaining element.

The publication to Masuda discloses a wiper assembly including the provision of predetermined breaking points (17c) defined by an elongated hole (17b) provided in the region of the retaining element (17a) on plate-shaped base (17) of the wiper device (fig.2). Such allows for improved impact absorbing by the wiper assembly.

It would have been obvious to one of skill in the art to provide the wiper device of Metz with predetermined breaking points, defined by a hole, in the region of the retaining element on the base, as clearly suggested by Masuda, to improve impact absorbing by the wiper assembly and thus a reduction of pedestrian injuries.

With respect to claim 1, any of the shown structure of Metz can be the stress-controlling elements. For example, in figure 7, the finned structures extending from the bearing (28) to the base are considered as stress-controlling elements, at least as far as defined. Such appear to be “arranged in such a way” to increase stress, at least as far as defined. Note that the particular stress increase will depend on the particular application of force and does not appear to define any particular structure for the controlling elements.

With respect to claims 4, 5, 10 and 11, note figures 2 and 3 of Metz wherein it can be seen that a collar-like border is provided on the plate that at least partially surrounds the drive unit (32,34,36) as claimed.

With respect to claims 6 and 12, Metz clearly shows the connection or joint of the base to a support tube (14, see figs. 2,3). While there is no particular reference number for the connection or joint, Metz is considered to disclose the claimed element where this connection occurs.

With respect to claims 8 and 14, it appears that breaking points provided on the base of Metz to enable the retaining elements to break away will be provided approximately centrally in the base, at least as far as defined.

With respect to claim 17, the provision of a hole in the plate of Metz to establish breaking points is considered to embody a "break-through", at least as far as defined, since it does allow for breaking.

Claims 1-5, 8-11 and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rapp (WO publication 02/22409) in view of Masuda (US patent application publication 2002/0083544).

The publication to Rapp discloses the invention substantially as is claimed, including a wiper device (fig.1) having a plate shaped base (10), a drive unit (12,14 and motor not shown but disclosed) arranged on said base, a wiper bearing (24) arranged on said base and a retaining element (22) arranged on said base.

The publication to Rapp discloses all of the above recited subject matter with the exception of at least one predetermined breaking point on the base arranged in a region of the retaining element.

The publication to Masuda discloses a wiper assembly including the provision of predetermined breaking points (14c, 17c) defined by an elongated hole (14b, 17b) provided in the region of the wiper bearing holding shaft (104) and the region of the retaining element (14a,17a) on plate-shaped base (17) of the wiper device (fig.2). Such allows for improved impact absorbing by the wiper assembly.

It would have been obvious to one of skill in the art to provide the wiper device of Rapp with predetermined breaking points, defined by a hole, in the region of the retaining element or wiper bearing on the base, as clearly suggested by Masuda, to improve impact absorbing by the wiper assembly and thus a reduction of pedestrian injuries.

With respect to claim 1, any of the shown structure of Rapp can be the stress-controlling elements. For example, in figures 1, 1a the finned structures extending on the base are stress-controlling elements, at least as far as defined. Such appear to be "arranged in such a way" to increase stress, at least as far as defined. Note that the particular stress increase will depend on the particular application of force and does not appear to define any particular structure for the controlling elements.

With respect to claims 4, 5, 10 and 11, note figures 1, 1a2 of Rapp wherein it can be seen that a collar-like border is provided on the plate that at least partially surrounds the drive unit as claimed.

With respect to claims 6 and 12, Metz clearly shows the connection or joint of the base to a support tube (14, see figs. 2,3). While there is no particular reference number for the connection or joint, Metz is considered to disclose the claimed element where this connection occurs.

With respect to claim 8, it appears that breaking points provided on the base of Rapp to enable the retaining elements to break away will be provided approximately centrally in the base, at least as far as defined.

With respect to claim 17, the provision of a hole in the plate of Rapp to establish breaking points is considered to embody a "break-through", at least as far as defined, since it does allow for breaking.

***Response to Arguments***

Applicant's arguments filed 20 May 2010 have been fully considered but they are not persuasive.

Applicant argues that none of the cited references teaches that the stress-controlling elements are arranged in such a way that a stress in the base in an impact with the windshield wiper device will increase on the predetermined breaking point in such a way that the predetermined breaking point will bend or even break off completely. Such is not persuasive. Such relates to an intended desired functioning of the stress-controlling elements based upon a not defined impact and does not appear to impart any particular structure to the controlling elements that would distinguish from the elements identified in Metz or Rapp. How does such functionality structurally distinguish the controlling elements from those of Metz or Rapp. It appears the particular impact (direction, force, area, etc.) will determine whether the controlling elements increase stress or not. It is noted that a particular impact does not make up a part of the claimed wiper device. If the controlling elements identified above in Metz and Rapp are the only structure which receives the impact then they will inherently increase the stress in the base on the predetermined breaking point since all the force would have to pass through such elements. Stress-controlling elements as identified in Metz and Rapp are considered to be "arranged in such a way", at least as far as defined, such that stress will increase in an impact. This relates to pure functionality of the elements and imparts no structure thereto to distinguish from Metz or Rapp.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary K. Graham whose telephone number is 571-272-1274. The examiner can normally be reached on Tuesday to Friday (7:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica S. Carter can be reached on 571-272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gary K Graham/  
Primary Examiner, Art Unit 3727

GKG  
27 July 2010